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COUNTERPART NO. 8  
OF 8 COUNTERPARTS

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INTERSTATE COMMERCE COMMISSION

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AGREEMENT

Dated as of March 26, 1971

between

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

and

GULF, MOBILE AND OHIO RAILROAD COMPANY

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Covering

9 2000 H.P. Model GP-38AC Diesel Electric  
Locomotives

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THIS AGREEMENT, dated as of March 26, 1971, by and between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation (Manufacturer), and GULF MOBILE AND OHIO RAILROAD COMPANY, a Mississippi corporation (GM&O);

WITNESSETH:

The Manufacturer and GM&O have heretofore entered into Locomotive Proposals No. 70-C-5 (Revision A) and 70-293 (Revision A) dated July 14, 1970 and accepted by GM&O on July 16, 1970 (a copy of Locomotive Proposals made a part hereof by reference), whereunder the Manufacturer agreed to construct and deliver to GM&O and GM&O agreed to accept and pay for 12 locomotives including the following locomotives:

9 2000 HP, Model GP-38AC diesel electric locomotives to bear GM&O's road numbers 721-729 inclusive (the "Locomotives").

Delivery of the Locomotives by the Manufacturer to GM&O is scheduled to begin on or about March 29, 1971. However, inasmuch as GM&O has not as yet consummated financing arrangements (pursuant to an Equipment Trust Agreement, or otherwise), it is not in position to accept delivery of and pay for the Locomotives under the terms of the Locomotive Proposal at this time. GM&O represents that such financing arrangements will be consummated, however, on or before April 20, 1971. GM&O (in order that it may use the Locomotives pending completion of the above financing arrangements) has arranged with the Manufacturer to give it temporary custody and possession of the Locomotives on their completion, solely as a bailee of the Locomotives, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to GM&O and GM&O hereby accepts from the Manufacturer the Locomotives as of the date each of them is delivered to GM&O at Glenn Yards, Chicago, Illinois, or such other place as may be specified by GM&O, for the period ending on the earlier of April 20, 1971, or the date of consummation of the above financing arrangements. At such time this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Locomotives shall remain in the Manufacturer and GM&O's right and interest therein is and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. GM&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, GM&O shall do such other

acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Locomotives.

GM&O agrees that it will permit no liens of any kind to attach to the Locomotives; and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Locomotives or the Manufacturer because of its ownership or because of the use, operation, management or handling of the Locomotives by GM&O during the term of this Agreement.

GM&O's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

GM&O will, at its own expense, keep and maintain the Locomotives in good order and running condition and will at its option repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Locomotives which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Locomotive to GM&O under this Agreement it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each Locomotive, in contemplation of the financing heretofore referred to, the following legend in letters not less than one inch in height:

"GULF, MOBILE AND OHIO RAILROAD EQUIPMENT TRUST,  
SERIES T: THE MERCHANTS NATIONAL BANK OF MOBILE,  
TRUSTEE, OWNER AND LESSOR."

GM&O hereby agrees to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Locomotives.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Locomotive, GM&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Locomotives as provided in the Locomotive Proposals, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or in the Locomotive Proposals relating to the Locomotives. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the Locomotive Proposals, and GM&O receives written notice thereof from the Manufacturer together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by GM&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to GM&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the Locomotive Proposals, the rights of such assignee to such payments as may be assigned together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Locomotives, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to GM&O by the Manufacturer. Any and all of such obligations howsoever arising, shall be and remain enforceable by GM&O, its successors, and assigns, only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

GM&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to GM&O of the Locomotives, as contemplated by this Agreement, shall not relieve GM&O of its obligations to accept, take and pay for the Locomotives in accordance with the terms of the Locomotive Proposals, or impair any of the Manufacturer's rights under the Locomotive Proposals.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers and under their corporate seals, all as of the date first above written.

ATTEST:

*W. A. Dink*  
Assistant Secretary

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

By

*D. D. Deane*  
Vice President

ATTEST:

*[Signature]*  
Assistant Secretary

GULF, MOBILE AND OHIO RAILROAD COMPANY

By

*R. E. Starnes*  
Senior Vice Pres.

STATE OF ILLINOIS)  
COUNTY OF COOK ) SS.

On this 5 day of April, 1971, before me personally appeared B. B. Brownell, to me personally known, who, being by me duly sworn, says that he is a Vice President of General Motors Corporation (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)


  
Notary Public

My commission expires October 28, 1971

STATE OF ALABAMA)  
COUNTY OF MOBILE ) SS

On this 2<sup>nd</sup> day of April, 1971, before me personally appeared R. E. Stevenson, to me personally known, who, being by me duly sworn, says that he is Senior Vice President of Gulf, Mobile and Ohio Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation

(Notarial Seal)

  
Notary Public

My commission expires July 14, 1971